

1 MR. WEBER: This may be done next week if it fits  
2 into the witness's schedule. I mean, I --

3 JUDGE SIPPEL: Well, Mr. --

4 MR. WEBER: -- realize here that we are also going  
5 to be having to work with the witness's schedule as well as  
6 our own schedule. I mean, we are ceratin available next  
7 week. We don't want to make Mr. Peter Price cancel his  
8 family vacation to come here but --

9 MR. BEGLEITER: No, we have Mr. Price here next  
10 week. I don't know what day, but we will have him here next  
11 week.

12 JUDGE SIPPEL: They have already made a  
13 representation that they have set these people aside for the  
14 month of May.

15 MR. WEBER: I mean, I could tell them by people  
16 right now we will definitely want to --

17 JUDGE SIPPEL: All right, who are they? Then they  
18 can tell them to get ready.

19 MR. WEBER: Okay. Bertina Ceccarelli.

20 MR. BEGLEITER: Your Honor, she is a former  
21 employee of Liberty. She is not an employee of Freedom. We  
22 have no control over her.

23 MR. SPITZER: We will do our best.

24 MR. BEGLEITER: We will -- I actually tried to put  
25 a call into her yesterday. She has not returned the call.

1 I don't know whether she will come to Washington. She may  
2 have to be served independently of us. She works, we have  
3 told you, I believe, for NBC, and I don't know if Bertina --  
4 if Ms. Ceccarelli will come. I just don't know. She may  
5 have to be compelled.

6 JUDGE SIPPEL: All right.

7 MR. WEBER: If we have to subpoena her, we will  
8 subpoena her.

9 MR. BEGLEITER: Okay, subpoena her. Okay.

10 JUDGE SIPPEL: And who lese?

11 MR. WEBER: Behrooz Nourain.

12 MR. BEGLEITER: We will produce him. All right.

13 MR. WEBER: Anthony Ontiveros.

14 MR. BEGLEITER: We will produce -- let me just  
15 explain. These are both Freedom employees. Freedom has  
16 agreed, we have asked Freedom for permission to produce  
17 these people. Freedom has agreed to that permission, and we  
18 will produce those people.

19 JUDGE SIPPEL: All right, now, I am familiar with  
20 Mr. Nourain. What was the next name you gave me? I'm  
21 sorry.

22 MR. WEBER: Anthony Ontiveros, O-N-T-I-V-E-R-O-S.

23 JUDGE SIPPEL: And the fourth one?

24 MR. WEBER: Peter Price.

25 MR. BEGLEITER: We will produce him.

1 JUDGE SIPPEL: All right, I know who he is. They  
2 said he will be produced.

3 MR. WEBER: And Bruce McKinnon.

4 MR. BEGLEITER: Okay, McKinnon is in the same  
5 category as Ms. Ceccarelli. As we have indicated in our  
6 interrogatory responses, he now resides in Massachusetts. I  
7 put a call into him yesterday. He did not return the call.  
8 I don't know whether he will agree or not agree to come to  
9 Washington. He may also have to be subpoenaed.

10 JUDGE SIPPEL: Is Ms. Ceccarelli, am I pronouncing  
11 that right?

12 MR. SPITZER: Ceccarelli.

13 JUDGE SIPPEL: Is she in New York City?

14 MR. BEGLEITER: Yes, she is.

15 JUDGE SIPPEL: And you said she is with NBC?

16 MR. BEGLEITER: She's with NBC.

17 JUDGE SIPPEL: Well, that's a good start.

18 So these people, except for -- unless you get into  
19 subpoena problems, at least three of these five will be  
20 deposed next week. And I know basically -- well, I have --  
21 what was Mr. McKinnon's role?

22 I know that Ms. Ceccarelli is mentioned in one of  
23 the papers and identified. But what is Mr. McKinnon, what  
24 is his role?

25 MR. WEBER: I will let them speak.

1 MR. BEGLEITER: Mr. McKinnon for a time was chief  
2 operating -- had the title of executive vice president and  
3 chief operating officer. He left in '93, early '93.

4 JUDGE SIPPEL: Who is he with now?

5 MR. BEGLEITER: He's with the law firm of Choate,  
6 Hall & Stewart. He is not an attorney.

7 JUDGE SIPPEL: He is not an attorney?

8 MR. BEGLEITER: Yes, he's --

9 MR. SPITZER: He's a manager.

10 JUDGE SIPPEL: Manager.

11 MR. BEGLEITER: Right, and he has been now more  
12 than three years away from the company.

13 JUDGE SIPPEL: Three. And how about Mr.  
14 Ontiveros?

15 MR. BEGLEITER: He is with -- he is now with  
16 Freedom. He was with Liberty.

17 JUDGE SIPPEL: What did he do at Liberty?

18 MR. BEGLEITER: He's the general manager of things  
19 like construction, installation, that sort of thing.

20 JUDGE SIPPEL: He would know something about the  
21 installation and hard-wire on buildings.

22 MR. BEGLEITER: Yes.

23 JUDGE SIPPEL: Okay.

24 MR. BEGLEITER: And remember, Your Honor, we have  
25 not -- except for -- we are now discovering a few possible

1 mistakes in terms of dates, in terms of buildings, but very  
2 few in the HDO. But generally speaking, we have -- we have  
3 for the vast majority conceded that we have -- that we hard-  
4 wired at about the time that the HDO says we hard-wired. We  
5 conceded that we prematurely activated at about the time  
6 that the HDO says there was a premature activation.

7 So what I am concerned about is we get to a day  
8 next week, Mr. Ontiveros cannot possibly remember the dates  
9 of the 30 some building that are involved in this case of 40  
10 some. But, yes, he was -- he is -- he will have the  
11 information, that is correct.

12 JUDGE SIPPEL: Well, you are going to talk to him,  
13 I am assuming you are going to talk to him before he goes on  
14 the record.

15 MR. BEGLEITER: Right.

16 JUDGE SIPPEL: What is it that he doesn't -- you  
17 can --

18 MR. BEGLEITER: No, no, just the dates. He has  
19 the HDO in front of him.

20 JUDGE SIPPEL: Let me finish. Let me finish.

21 What I am saying in talking to him you say are  
22 there some dates that you are not familiar with, are there  
23 some dates that we should be looking for. And then you can  
24 show him the dates.

25 MR. SPITZER: Well, Your Honor.

1 JUDGE SIPPEL: And they can ask him that question.

2 MR. SPITZER: The documents we have produced  
3 responsive to the document demands have all those dates  
4 within them.

5 JUDGE SIPPEL: Well, I am sure they do. But what  
6 I am saying is, is that in the course of preparing him and  
7 yourselves for the deposition you may come across some  
8 documents that he says, "Oh, why don't you give me document  
9 A," and it was something that you forgot to give to the  
10 Bureau or something.

11 I am saying this can be an ongoing process.

12 MR. SPITZER: It has been and it will be. Yes.

13 JUDGE SIPPEL: Nobody is going to get surprised by  
14 anything.

15 MR. WEBER: Well, the Bureau certainly doesn't  
16 expect to be asking him any questions like on what date did  
17 you activate 35 West End Avenue. I mean, --

18 MR. BEGLEITER: Okay, fine. South Florida Water  
19 Management District

20 MR. WEBER: -- that won't be what we have him on  
21 the stand for.

22 MR. BEGLEITER: Well, you know, he certainly is,  
23 you know, he certainly has knowledge regarding those issues.

24 JUDGE SIPPEL: Okay. Well, I am just using this  
25 for illustrative purposes, because -- yes, if this starts to

1 get dilly-dally by witnesses who are not able to answers  
2 questions that they should be able to answer, there can be  
3 inferences drawn, and the burden of proof is on the people  
4 across the table from you.

5 So, you know, they have -- it's in their interest  
6 to get a good clean record established that's going to be  
7 credible, and it's going to be reliable. And they don't do  
8 that, then they haven't done their job. So I am confident  
9 that this can be done based on the issues as I see them.

10 All right, then, I am going to expect by -- I will  
11 say by Friday I am going to -- by the time I leave the  
12 office on Friday I am going to be expecting to see copies of  
13 notices of deposition.

14 Are you going to participate in this, Mr. Beckner?  
15 I mean, I know you are going to be at the -- I know you are  
16 going to be at the deposition sessions, but --

17 MR. BECKNER: I certainly will.

18 JUDGE SIPPEL: -- are you going to put something  
19 together?

20 MR. BECKNER: Yes, we will.

21 There was an earlier discussion about the counsel  
22 for Liberty was professing not to know what else more they  
23 could supply in response to the Bureau's interrogatories.  
24 And one of the things they could supply, they were asked to  
25 supply at the beginning and didn't supply, were the

1 addresses of these individuals.

2 For example, Ms. Ceccarelli, who we now find out  
3 is an ex-employee. If we had had her address on April 5th  
4 when we were supposed to, we could have already been  
5 contacting her for the subpoena. And now we have to start  
6 that process late.

7 MR. SPITZER: Well, Your Honor, I would note only  
8 that Mr. Beckner should have observed his own  
9 interrogatories and not relied upon somebody else's because  
10 we had many conversations with counsel for the Bureau in  
11 which we covered and provided the information they sought.  
12 Mr. Beckner had either served his own interrogatories that  
13 were relevant or else participate in those conference calls.  
14 He would have known that we had been providing the  
15 information required.

16 You ruled on his motion to compel, Your Honor, and  
17 that speaks to the relevance of his demands.

18 MR. BECKNER: Well, Your Honor, I am accustomed to  
19 doing things on the record.

20 MR. SPITZER: Well, Mr. Beckner --

21 MR. BECKNER: Phone calls are not on the record.

22 MR. SPITZER: Mr. Beckner, we responded to the  
23 Bureau's phone calls, and their requests for additional  
24 information. And we were forthright in doing so.

25 JUDGE SIPPEL: Well, I have said what I am going



1 to say about -- I mean, I just find it to be a nonresponsive  
2 answer to an interrogatory when you just give a name. I  
3 mean, I just --

4 MR. SPITZER: Your Honor.

5 JUDGE SIPPEL: Where do we go from there?

6 MR. SPITZER: The Bureau did not ask for home  
7 addresses in these phone calls. We gave them what they  
8 wanted.

9 I may just say, Your Honor, they insist on asking,  
10 here is just a classic example, the percentage ownership of  
11 the owners of Liberty. They never asked for it and yet this  
12 hold this out as an example. And so we have been trying,  
13 and they are just not --

14 JUDGE SIPPEL: I am distinguishing between the  
15 two. The fact that -- if there is an inartful question  
16 about, you know, identify or state the name of, or something  
17 like that, you know what information they are after. You  
18 know why they need the information.

19 MR. BEGLEITER: Well, Your Honor, we ended up  
20 giving it to them except for a few items. We gave it to  
21 them on 29th. We thought that they would be satisfied. And  
22 we were perfectly willing to give the other information such  
23 as the date of employment.

24 JUDGE SIPPEL: What about addresses? What about  
25 that Mr. Beckner says he doesn't have addresses? Where were

1 the addresses?

2 MR. BEGLEITER: Well, we gave them -- we did not  
3 want to give home addresses, Your Honor. I know Your Honor  
4 has already dealt with that, because we felt that was an  
5 invasion of privacy.

6 JUDGE SIPPEL: Well, how do you serve people with  
7 subpoenas?

8 MR. BEGLEITER: Well, we would --

9 MR. SPITZER: Place of employment.

10 MR. BEGLEITER: Well, first of all --

11 JUDGE SIPPEL: Well, you don't to serve somebody  
12 with a subpoena at their place of employment, do you?

13 MR. SPITZER: If we had been instructed to do it,  
14 we will do it, Your Honor. That's not an issue. It's just  
15 that they --

16 MR. BEGLEITER: We are preparing that.

17 MR. SPITZER: The Bureau had not asked for it in  
18 these phone calls, and so it had not been an issue. But we  
19 are happy to do it.

20 MR. BECKNER: Your Honor, the Bureau asked for it  
21 in its instructions.

22 JUDGE SIPPEL: That is what I thought.

23 MR. BECKNER: In the original questions. I know  
24 that --

25 MR. SPITZER: Mr. Beckner.

1 MR. BECKNER: -- because I assisted them in  
2 drafting those instructions.

3 MR. SPITZER: Mr. Beckner, you were not in the  
4 phone calls where we discussed with the three attorneys  
5 across the room what they needed to supplement what we had  
6 given them, and they did not say we need the home addresses.  
7 We're happy to do it.

8 MR. HARDING: We entered into a stipulation where  
9 we joined in their interrogatories.

10 MR. SPITZER: Where is that?

11 MR. BEGLEITER: Where is that?

12 MR. HARDING: The stipulation prior to the  
13 prehearing conference that we all signed where we agreed to  
14 cooperate and work together. We joined in that stipulation.

15 MR. SPITZER: You filed your separate document  
16 demand. It does not say so, sir.

17 MR. HARDING: We have our --

18 MR. SPITZER: It does not say so.

19 JUDGE SIPPEL: I'm sorry. Mr. Weber?

20 MR. WEBER: Thank you, Your Honor.

21 The main reason the whole idea of addresses never  
22 came up was because it was not until May 3rd that we learned  
23 who is no longer -- of the 150 plus names they initially  
24 listed, who of those 150 people no longer had any  
25 affiliation with Liberty or Freedom. Until that point we

1 weren't necessary going to require if it was a Liberty  
2 employee to get that person's home address because they  
3 would have worked with us to see that that person would have  
4 been noted for deposition.

5 Not until May 3rd did we know who has no  
6 affiliation with Liberty, and by that point we had already  
7 filed our motion to compel, saying we want answer that are  
8 compliant with our initial interrogatory request.

9 JUDGE SIPPEL: Well, as I say, I feel that you  
10 didn't get the information that you were entitled to up  
11 front. But what can I do about that now?

12 We are trying to get this case moving, and, you  
13 know, you are going to get the information. You certainly  
14 can start with -- you know, we have made tremendous  
15 progress. There is going to be at least three people you  
16 are going to depose in the next five days, whatever. And I  
17 think once you get rolling, once you go down that road it's  
18 going to move very quickly for you.

19 MR. WEBER: One other point on depositions, if I  
20 may.

21 JUDGE SIPPEL: Yes.

22 MR. WEBER: I have spoken to Mr. Beckner and we do  
23 plan on doing joint notices of deposition. I would just  
24 like to be clear on the record now. We will essentially  
25 divide up the workload of witnesses where on certain

1 witnesses he may take the lead, ask the questions first, and  
2 then the Bureau will ask whatever questions they believe are  
3 remaining, and vice-versa. Other times the Bureau will take  
4 the lead and then Mr. Beckner will have a chance if he  
5 believes the Bureau missed any he will ask questions.

6 JUDGE SIPPEL: Well, there is no cross-fire.

7 MR. WEBER: And no duplication of questions.

8 JUDGE SIPPEL: By that I mean not, you know, you  
9 go, and then you go. I mean, it's not going to be one of  
10 these tag team things. You have a discrete section that you  
11 are going to cover, and then Mr. Beckner has to cover, and  
12 then, you know, you can collaborate, go off the record if  
13 there is any clean ups and decide who is going to go after  
14 the clean ups.

15 MR. HOLT: Your Honor, Cablevision may wish to  
16 join in certain of those depositions as well. I just wanted  
17 to make that clear for the record.

18 JUDGE SIPPEL: Mr. Holt. Okay.

19 All right, let's see what happens. And I am  
20 confident that it's going to work, it's going to work well.

21 All right. Oh, on the motion to add issues now, I  
22 have got something very short I want to say about that, and  
23 that is that I don't see how I can rule on that without  
24 seeing the contracts between Freedom and Liberty.

25 Well, now it's not Liberty anymore. It's --

1 MR. SPITZER: Batholdi.

2 JUDGE SIPPEL: That's right.

3 I am going to need to see those documents. Do you  
4 know what I am talking about? There is a service -- is that  
5 right, Mr. Pettit, there is a service contract and then  
6 there is another?

7 MR. PETTIT: Yes, there is a master purchase  
8 agreement and a service agreement as well.

9 JUDGE SIPPEL: Those are the ones I am going to  
10 have to see because those are what are relied upon in the  
11 opposition as being -- you are saying that the nature of  
12 those agreements are such that they don't constitute a  
13 transfer of control, and everything is said about it except  
14 that documents aren't here.

15 Has the Bureau seen the documents?

16 MR. WEBER: No, we have not, Your Honor.

17 JUDGE SIPPEL: Why hasn't the Bureau seen the  
18 documents? Is there a -- are we going to get into a thing  
19 about that too? Privilege or anything like that?

20 MR. SPITZER: Well, Your Honor, Mr. Pettit will  
21 correct me if I am wrong, but I am not sure that there is  
22 any reason to see them at any point in time. They were not  
23 a party to the contract as far as I am aware.

24 There is a confidentiality provision in them, and  
25 we may have to consider whether we submit them in camera,

1 because there are confidentiality provisions that are in the  
2 asset purchase agreement. But this does bear on the issue  
3 of the Bureau's having had knowledge prior to the execution  
4 of those documents, and I know there has been some  
5 communication back and forth that will continue because  
6 representatives of the Enforcement Bureau were told about  
7 this agreement prior to its execution. This in fact was  
8 not --

9 JUDGE SIPPEL: Wait, I don't want to go back down  
10 that road because I have been reading about that all week.

11 MR. SPITZER: All right. Even though that was not  
12 disclosed to Your Honor.

13 JUDGE SIPPEL: I received Mr. Pettit's letter and  
14 I believe me, we can get to that before we close today. I  
15 can come back to that.

16 But right now my focus is on only one thing; that  
17 I don't have adequate information to address the issue. I  
18 need the information. If it comes to me for in camera, then  
19 you are going to have to make the request for in camera.  
20 But the sooner I get it the sooner I can look at it,  
21 obviously.

22 My preference would be, as in any kind of a  
23 situation like this, that the information get shared; that  
24 everybody see it, that all the parties see these agreements.

25 Confidentiality will be accorded unless we have to

1 go the next step.

2 MR. SPITZER: We are mindful of your concerns, and  
3 we will address them immediately.

4 JUDGE SIPPEL: And the confidentiality would apply  
5 based upon -- even though I haven't signed it yet -- but it  
6 would be the same spectrum of people that would have access  
7 to it as contemplated in the protective order.

8 But I want to see -- you know, by the end of the  
9 week I want to have those documents at least in my  
10 possession. Okay?

11 MR. WEBER: And you are assuming then, Your Honor,  
12 that we would be afforded the opportunity then to comment on  
13 the documents and how they impact on the pending motion?

14 JUDGE SIPPEL: Well, I don't want to invite that,  
15 but I certainly think if I am looking at something, you  
16 should be looking at it too.

17 MR. BECKNER: Your Honor, just to make clear as to  
18 who, Time Warner certainly would like to have, at least  
19 their lawyers, have the right to look at the documents.

20 MR. SPITZER: Your Honor, we hear the other  
21 parties, but we will have to exam the document, the  
22 confidentiality provisions in the document, and speak to our  
23 clients, and also to Ms. Kiddoo is here on behalf of RC and  
24 Freedom, but we will have to resolve these issues.

25 JUDGE SIPPEL: All right. Well, what I would



1 contemplate doing, but again I am speaking in a vacuum here  
2 because I haven't seen the document, would be having another  
3 conference and hearing the positions orally with respect to  
4 the arguments, and the documents. Because what that does  
5 for me is that crystallizes language in the -- I get a much  
6 better focus on it that way if I can hear it in the exchange  
7 of counsel with respect to the language that's in the  
8 agreement.

9 Now, the arguments about that, I don't know what  
10 to say about this meeting that was held up at the Commission  
11 level -- not the Commission level -- I'm sorry -- but at the  
12 staff level with high staff members at the Bureau. I don't  
13 know how to sift through that unless we start getting into  
14 affidavits or something.

15 Your position, Mr. Pettit, you started this with a  
16 letter, but your position with respect to what transpired at  
17 that meeting seems to be a loggerheads with what Mr. Weber  
18 represents it to be.

19 I don't mean to say that somebody is not telling  
20 the truth. It just seems that there is a difference of  
21 interpretation here, at least.

22 Am I right on that assumption?

23 MR. PETTIT: I think it is certainly inconsistent  
24 with what was filed, yes, what was filed today by the trial  
25 staff.

1 JUDGE SIPPEL: Were you at the meeting, Mr. Weber,  
2 you and your staff?

3 MR. WEBER: No, Your Honor, I was not.

4 JUDGE SIPPEL: So your --

5 MR. WEBER: The chief of our division was at the  
6 meeting, yes. My immediate supervisor was at the meeting.  
7 And he has an affidavit attached to our filing last night.

8 MR. BECKNER: Didn't he verify the whole thing?

9 MR. WEBER: Yes. And we also spoke to the deputy,  
10 the deputy chief of the bureau, and she will also be  
11 submitting an affidavit at a later time. We were just  
12 unable to get her to sign one prior to the filing last  
13 night.

14 JUDGE SIPPEL: And this would have to deal with  
15 the motion for leave to file. There is another comment on  
16 the -- is it on the opposition?

17 MR. WEBER: Right.

18 MS. POWER: Right.

19 JUDGE SIPPEL: Which leads me, by the way, to say  
20 that is there an opposition on that motion for leave that  
21 the Bureau filed?

22 MR. BEGLEITER: We only got it last night, Your  
23 Honor. I would like to just, if I can, have a day to  
24 consider that. And what it looks to me is that the Bureau  
25 did not make a motion within time to enlarge. They have

1 piggybacked on Time Warner with a comment. Now they want to  
2 essentially make it their motion to enlarge by submitting a  
3 reply. So I would like to consider it.

4 JUDGE SIPPEL: Well --

5 MR. BEGLEITER: But it just seems kind of -- the  
6 way they are going about it is kind of -- it looks to me as  
7 if they are trying to avoid the fact that their motion is  
8 late.

9 MR. WEBER: No, Your Honor, we aren't trying to  
10 piggyback on Time Warner's motion to enlarge to make it our  
11 motion to enlarge.

12 Their opposition made representations about a  
13 purported meeting with Bureau staff, and we felt compelled  
14 that we had to set the record straight about that meeting,  
15 and that is why we filed.

16 MR. BEGLEITER: Your Honor, that comment came on  
17 the same day that we filed our papers. They made no  
18 reference to the meeting. They made no reference to our  
19 papers.

20 MR. WEBER: The Bureau is perfectly in their right  
21 to file a motion -- comments on the motion to enlarge. We  
22 are a party to this proceeding. And even though the motion  
23 to enlarge was not directed against us, we could file -- we  
24 could have filed an opposition it had we been opposed to the  
25 same day that Liberty filed their opposition. However, we

1 were in support of it and that was why we filed the comments  
2 in support.

3 JUDGE SIPPEL: Well, you --

4 MR. WEBER: As a party in the proceeding, we have  
5 a right to file.

6 JUDGE SIPPEL: You also asked for a new issue in  
7 the comment though, and that's not authorized by the rules.

8 But, again, you know, this case is on a fast  
9 track, hopefully it's on a fast track. I am not going to  
10 let -- that request, that whole issue and related issues of  
11 fact is obviously too complicated to try and get that in  
12 shape to try on the 24th of June even if it gets added, and  
13 I am a long way from getting to the point where I think it  
14 should be added.

15 If I don't get agreements, I mean, if I didn't  
16 have the agreements to look at, I certainly would add the  
17 issue very quickly because otherwise I don't know what's  
18 going on. But if I can -- so this is going to take time to  
19 sift out.

20 What Mr. Pettit is -- well, Mr. Pettit has more  
21 than suggested this in his letter, but he intends to file,  
22 I think, in opposition, am I correct, in opposition to their  
23 position?

24 MR. PETTIT: That's correct, Your Honor, and it  
25 was raised by Time Warner as well in a pleading filed

1 yesterday, I think, rather today, the reply.

2 MR. BECKNER: Well, we filed a reply in support of  
3 our motion to enlarge which obviously --

4 MR. PETTIT: But it now includes --

5 MR. BECKNER: -- mentions the Bureau's --

6 MR. PETTIT: Well, in fairness, it lists as one of  
7 the issues now sought a real party-in-interest issue.

8 MR. BECKNER: Well, that's right.

9 JUDGE SIPPEL: Which wasn't asked the first time  
10 around, is that correct?

11 MR. PETTIT: Yes.

12 MR. BECKNER: Your Honor, the reason we added the  
13 real party-in-interest issue is because we didn't know very  
14 much until Liberty filed its opposition, and the opposition  
15 then said, oh, well, we sold all of the business but the  
16 microwaves to this entity called Freedom, and all of our  
17 employees that used to work for us now work for Freedom  
18 except for a few sales folks.

19 And we said, well, who is minding the store here?  
20 Who is running these microwave systems for which you are  
21 still telling the Commission that you are a private cable  
22 operator with 30,000 subscribers?

23 So the real party-in-interest question only  
24 surfaced as a result of Liberty's opposition to our original  
25 motion to enlarge.

1           MR. PETTIT: I understand all of that. I am just  
2 suggesting that we should have an opportunity to respond  
3 somehow to them.

4           JUDGE SIPPEL: Right, it's a new issue and he has  
5 an opportunity to respond to it as the rules permit him to  
6 do it, and then you reply to what he his opposition says.

7           MR. BECKNER: Well, I think in fairness, I mean, I  
8 won't dispute that. But I think in fairness, the Bureau  
9 also should be permitted to address the real party-in-  
10 interest question for the same reasons that we raised it in  
11 our reply based on new information that was supplied by  
12 Liberty.

13          JUDGE SIPPEL: Well, I'm sorry, I -- yes, we  
14 started off with this in terms of just a procedural issue  
15 which is the motion for leave to file that the Bureau has  
16 filed.

17               I am going to exercise my discretion, Mr.  
18 Begleiter, I don't mean to cut you off on this, but the  
19 exchange of the factual information on this is obviously,  
20 it's a very -- there is a major disagreement on this. And I  
21 do have to hear all sides fully on it, and particularly  
22 since the Bureau now, its credibility has, in a sense, been  
23 put in issue. So I am going to let in -- I am going to  
24 grant their motion for leave to file. So what you filed  
25 last night is now before me.

1           Mr. Pettit, the procedure that you have outlined  
2     in your letter, I will permit that to go forward. So  
3     whatever the time period is from their having filed the  
4     request for the added issue, and that goes back a couple of  
5     day, I believe.

6           MR. PETTIT: Your Honor, if I may, in light of  
7     particularly Time Warner's filing of yesterday, we may by  
8     motion, and we can talk about it now, set a date for  
9     consolidated response both to the Bureau and to Time Warner.  
10    I believe the response to the Bureau would be -- otherwise  
11    would be due on Friday. I would suggest next week sometime  
12    if we could -- and we could do that perhaps Wednesday would  
13    be fine with us.

14          JUDGE SIPPEL: Okay. Well, let's -- yes, why  
15    don't we set that down for May the 22nd. And that will be  
16    your opposition to --

17          MR. PETTIT: Perhaps we will call it comments.

18          JUDGE SIPPEL: Well, let's keep it as an  
19    opposition.

20          MR. PETTIT: Okay.

21          JUDGE SIPPEL: I don't want to comment on the  
22    comment. But opposition comes in on the 22nd. Okay, and  
23    then there will be -- and that will be the opposition to the  
24    requested real party-in-interest.

25          And then there will be a reply due. Normally what

1 it is? It's normally a five-day period, and, of course,  
2 this will all be hand-delivered. So five business days, not  
3 counting the weekend, that would give you to the 22nd to  
4 come back. And, Mr. Beckner, you also, the 22nd for --

5 MR. BECKNER: The 27th or the --

6 JUDGE SIPPEL: The 22nd.

7 MR. BECKNER: I thought that was the opposition  
8 date.

9 JUDGE SIPPEL: I'm sorry, the 29th. I'm sorry.  
10 The 29th.

11 MR. BECKNER: Good.

12 JUDGE SIPPEL: Now, in the meantime I am expecting  
13 that they are going to have a copy of these agreements.

14 MR. SPITZER: The only --

15 JUDGE SIPPEL: So that they can -- the agreements  
16 that I talked about that you are going to give to me, at a  
17 minimum in camera. But what I am saying is I am  
18 anticipating myself here, but I am expecting that for them  
19 to come up with a complete reply they are going to have  
20 access to those agreements, even in confidentiality terms  
21 that we talked about, at a minimum.

22 MR. SPITZER: You are anticipating the night of  
23 the 22nd filing?

24 JUDGE SIPPEL: I am anticipating that with at  
25 least the 22nd filing. As I say, I am expecting to have



1 those agreements by the end of the week myself, okay? We  
2 understand that. That means the 17th.

3 If there is no reason for asking for  
4 confidentiality after you have talked to your clients about  
5 this, I would expect that the other parties -- that the  
6 parties would have that same day as I get it. If you want  
7 to hold back for me, if you want to give it to them anyway.

8 MR. SPITZER: Your Honor, as I said, we hear your  
9 concerns. Your Honor obviously will receive them forthwith.  
10 With respect to the other parties, we will have to talk to  
11 our clients and the other parties to the agreement and look  
12 at the agreement itself to see what it states.

13 JUDGE SIPPEL: All right.

14 MR. SPITZER: We hear your concerns and obviously  
15 wish to be responsive.

16 JUDGE SIPPEL: Well, when you give it to me on the  
17 17th, you will give it to me with a cover letter or some --  
18 probably it will be a cover letter. I want to know in the  
19 cover letter whether or why not it's not with the other  
20 parties at the time that it's coming to me. Either you are  
21 still consider it, or you've got a problem with its  
22 confidentiality, something, something, something, or  
23 something.

24 In other words, I want to know --

25 MR. SPITZER: We will do that, Your Honor.